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Significant Changes to New South Wales Land Rich Duty

From 1 July 2009, significant changes apply to the way in which land rich duty is imposed, and calculated, in New South Wales. The changes broaden the types of entities that are subject to duty and increase the amount of duty payable by including the value of goods in New South Wales in the calculation of duty.

The purpose of this Tax Alert is to outline in general terms the main changes. Specific advice about the application of the new provisions should be sought in respect of individual transactions.

As has been the case under the previous provisions, duty is payable when shares in a private company or units in a private unit trust scheme (now called a "private landholder") are acquired. The previous acquisition threshold of 20% in relation to private unit trust schemes is increased under the new provisions to 50%. The new acquisition threshold for interests in private companies remains at 50%.

The new provisions extend the imposition of duty to acquisitions of shares in listed companies and units in public unit trust schemes (called "public landholders"). The new provisions operate to impose duty:

- on acquisitions of 90% or more of the shares or units in a listed company or public unit trust scheme,
- on acquisitions by a shareholder or unit holder that increase their holding to 90% or more, and
- on acquisitions of further shares or units by persons holding of 90% or more of the shares or units in a listed company or public unit trust scheme.

Aggregation provisions similar to those that previously applied to private landholders have been enacted and apply to acquisitions in public landholders as well as private landholders.

The inclusion of acquisitions of interests in public entities within the scope of land rich duty brings New South Wales into line with Western Australia and may signal the future direction to be taken by other jurisdictions.

One of the most significant changes is the substantial narrowing of the "land rich" requirement. The requirement that the relevant private landholder be "land rich" previously comprised two limbs: firstly, that the land in New South Wales owned by the private landholder had an unencumbered value of $2 million or more and secondly, that the value of that land be at least 60% of the value of all of the private landholder's assets no matter where located. This second limb has been removed (except in the case of primary producer landholders). The only requirement remaining under the new provisions is that the land in New South Wales has an unencumbered value of at least $2 million. Acquisitions of interests in a primary producer landholder are dutiable if the unencumbered value of land in New South Wales owned by the primary producer is $2 million or more and its landholdings in all places comprise at least 80% of the unencumbered value of all of its property.

Another significant change is the way in which duty is to be calculated. Under the previous provisions, duty was payable on the unencumbered value of land in New South Wales owned by the private landholder, multiplied by the percentage interest acquired. The duty payable under the new provisions is payable on the unencumbered value of land and goods (excluding items such as trading stock and motor vehicles) in New South Wales owned by the private landholder, multiplied by the percentage interest acquired (unless the value of the goods in New South Wales is at least 90% of the value of the private landholder's land and goods in New South Wales, in which case the value of the goods is excluded from the calculation). The rate of duty remains the general rate.

In the case of an acquisition in a public landholder, the rate of duty is also the general rate. The amount of duty payable is 10% of the duty that would be payable on a transfer by the public landholder of all of its land and goods (excluding items such as trading stock and motor vehicles) in New South Wales. The duty that would be payable on such a transfer is calculated by reference to unencumbered value. It is to be noted that this flat factor of 10% applies irrespective of the actual percentage interest acquired (over 90%). For example, if a 90% unit holder acquires a further 1% interest, the calculation would be the same as if that unit holder had acquired a further 9% interest.

Although the inclusion of the value of goods in calculating the amount of duty payable is a new approach in New South Wales, it is not uncommon in that a number of jurisdictions include the value of fixtures,
or the value of land held by "linked" entities, in their calculation mechanisms.

The requirement to lodge an acquisition statement remains, but the period in respect of which information must be provided is extended in some cases. The exemptions previously available also remain, although these have been redrafted to some extent and will require careful review to determined their availability.

Finally, it should be borne in mind that the legislative requirements for land rich duty vary substantially between jurisdictions, so that acquisitions of shares or units which are not dutiable in New South Wales may nonetheless give rise to a liability for duty in one or more other jurisdictions in which land is owned, and an acquisition that is dutiable in New South Wales may also attract duty elsewhere.

Advice should be sought on the potential application and operation of the new provisions in advance of any acquisition of an interest in a company or unit trust scheme with direct landholdings in New South Wales, or landholdings in New South Wales held indirectly through one or more associated or "linked" entities.

Please contact a member of Piper Alderman's tax team for further information.

Who to contact

Judy Choate

t +61 8 8205 3426
f +61 8 8205 3300
e jchoate@piperalderman.com.au

Robert Kavanagh

t +61 8 8205 3392
f +61 8 8205 3300
e rkavanagh@piperalderman.com.au